

LEWIS
AND
ROCA
LLP
LAWYERS

1 3993 Howard Hughes Parkway, Suite 600
2 Las Vegas, Nevada 89169
3 Facsimile (702) 949-8321
4 Telephone (702) 949-8320

5 Robert M. Charles, Jr. NV State Bar No. 006593
6 Email: rcharles@lrlaw.com
7 John Hinderaker AZ State Bar No. 018024
8 Email: JHinderer@lrlaw.com

9 Attorneys for USACM Liquidating Trust

10 **UNITED STATES BANKRUPTCY COURT**
11 **DISTRICT OF NEVADA**

12 In re:
13 USA Commercial Mortgage Company,
14 Debtor.

15 Case No. BK-S-06-10725-LBR
16 Chapter 11

17 **Motion To Limit Notices Mailed
18 To All Creditors**

19 Date: July 26, 2011
20 Time: 1:30 p.m.
21 Estimated Time for Hearing: 10 minutes

22 The USACM Liquidating Trust (the “USACM Trust”) moves this Court for an
23 order limiting the notices mailed to all creditors. This Motion is based upon the following
24 Memorandum of Points and Authorities and is supported by the Court’s record and the
25 declaration of Marilyn Schoenike filed this date.

26 **MEMORANDUM**

27 On January 8, 2007, this Court entered its Order Confirming the “Debtors’ Third
28 Amended Joint Chapter 11 Plan of Reorganization” As Modified Herein [DE 2376].
29 Notice of Entry of the Confirmation Order was filed on January 9, 2007, and served on
30 January 11 and 12, 2007 [DE 2387]. The proof of claim deadlines of November 13, 2006
31 and the deadline for Direct Lenders to file proofs of claim of January 13, 2007 have
32 passed.

33 Since the Effective Date, the USACM Trust has worked with BMC Group, Inc.,
34 (“BMC”), as the original noticing agent, Sierra Consulting Group, LLC and Lewis and

LEWIS
AND

ROCA
LLP

L A W Y E R S

1 Roca staff to try to ensure that each creditor or other entity entitled to notice received
2 notice, and that the addresses used for notice are accurate.

3 The original master mailing matrix is maintained and updated by BMC. The
4 USACM Trust believes from communications with BMC that as proofs of claim were
5 filed through BMC, BMC updated its mailing list to account for addresses listed on the
6 proofs of claim. The USACM Trust has retained Sierra Consulting to track claims. When
7 address changes are received by the Trust, they are forwarded to Sierra Consulting to up-
8 date its records. These updated addresses have not been filed with the Court, but Sierra
9 Consulting has updated its database as it has received updated address information.

10 The USACM Trust has also worked with BMC to take the original and amended
11 mailing lists and update them as creditors provide notices of change of address. Similarly,
12 when mail is returned undeliverable, the USACM Trust has used Sierra Consulting and
13 Lewis and Roca personnel to research the creditor name, searching for valid addresses.
14 The USACM Trust now has a working service list that tracks change of address
15 information and deletes addresses where mail is returned as undeliverable.

16 This bankruptcy case is now post confirmation. All required notices under
17 Bankruptcy Rule 2002 have been provided, with the exception of the objection to proofs
18 of claim 2002(g) which is ongoing. Counsel for the USACM Liquidating Trust is
19 providing notice as required to the parties in interest.

20 Pursuant to an Order [DE 8069], of this Court dated May 21, 2010, the USACM
21 Trust was permitted to satisfy the notice requirements of Rule 2002(g) by providing notice
22 to creditors at the most current, or last known, mailing address(es) provided to the
23 USACM Trust by the creditor or its authorized agent.

24 During the last twelve months, BNC Noticing Service mailed out twenty four
25 notices to creditors. It does not appear that BNC is using the most current information on
26 file with BMC. The notices consisted of: Notice of Transcript of Hearing; Notice of

LEWIS
AND

ROCA
LLP

LAWYERS

1 Stipulation and Order to Continue Hearing; Notice of Request for Removal from Master
2 Mailing List and ECF Filing; Notice of Entry of Order Sustaining Objection to Proofs of
3 Claim. (collectively "Notices"). The majority of the Notices were mailed to
4 approximately 5,000 creditors each time, at a minimum expense to the estate of
5 \$44,000.00. A copy of a BNC Certificate of Mailing is attached as Exhibit A.

6 Most of the notices did not materially affect the creditor, or did not pertain to that
7 creditor. Notice had previously been provided to the parties in interest by counsel for the
8 USACM Liquidating Trust, and an appropriate Affidavit of Mailing filed. In addition, the
9 receipt of the Notices caused confusion among the recipients. Counsel for the Trustee has
10 spent hours responding to inquiries on the receipt of the most recent mailing of the Orders
11 Sustaining the Objection to the Oak Shores II, and Ocean Atlantic Proofs of Claim.

12 Recently, over 1,200 of the notices were returned as undeliverable. Counsel for the
13 USACM Liquidating Trust has spent countless hours reviewing the returned mail and
14 updating its address base with new forwarding addresses as provided by the U.S. Postal
15 Service.

16 **DISCUSSION**

17 There is no requirement in the Bankruptcy Code or Rules that directs master
18 mailing matrix notice after the Effective Date of the Plan. This Court would greatly limit
19 expense and creditor confusion if it were to order that no further mailings be sent to the
20 master mailing matrix without a specific Court order. In the event that notice to all
21 creditors is required, this Court could enter an Order specifically directing that notice be
22 sent to all creditors listed on the Master Mailing List.

23 **REQUEST FOR RELIEF**

24 Wherefore, it is requested this Court enter an order that no notice be sent to all
25 creditors unless a specific Order is entered directing such notice.
26

LEWIS
AND

ROCA
LLP

L A W Y E R S

1 Dated: May 31, 2011.

2 LEWIS AND ROCA LLP

3
4
5 By /s/ Robert M. Charles, Jr., (# 6593)
6 Robert M. Charles, Jr., NV 6593
7 John H. Hinderaker, *pro hac vice*
8 Attorneys for USACM Liquidating Trust

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26